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February 12, 2024

VIA ECFHonorable John G. Koeltl
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007-1312Re: *SEC v. Virtu Financial, Inc.*, No. 1:23-cv-08072 (JGK)

Dear Judge Koeltl:

Our firm represents Virtu Financial, Inc. ("VFI") and Virtu Americas LLC ("VAL") (collectively, "Virtu" or "Defendants"), in the above-referenced action. Pursuant to Rules 1.F and VI.A.2 of Your Honor's Individual Practices, we respectfully request the Court's permission to again file under seal four exhibits (the "Exhibits") to the Declaration of Lorin L. Reisner in Support of Defendants' Motion to Dismiss the Amended Complaint, which is being filed today. Plaintiff Securities and Exchange Commission consents to this motion.

**APPLICATION GRANTED
SO ORDERED**

John G. Koeltl, U.S.D.J.

Virtu filed a substantively identical application to seal the same Exhibits in support of Virtu's first Motion to Dismiss on December 4, 2023, ECF No. 21, which the Court granted on December 5, 2023 ECF No. 26. For the reasons discussed in Virtu's first letter motion, and reiterated below, the Exhibits should be sealed because they consist of confidential and proprietary business information.

Courts may seal records under their "inherent equitable powers . . . over their own process, to prevent abuses, oppression, and injustices." *Int'l Prods. Corp. v. Koons*, 325 F.2d 403, 407–08 (2d Cir. 1963) (quotation marks omitted). While there is a "common law presumption of access" to judicial documents, *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006), the "weight of the presumption is a function of (1) 'the role of the material at issue in the exercise of Article III judicial power' and (2) 'the resultant value of such information to those monitoring the federal courts,' balanced against 'competing considerations' such as 'the privacy interests of those resisting disclosure.'" *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 142 (2d Cir. 2016) (quoting *Lugosch*, 435 F.3d at 119–20). Records may be sealed on a finding that doing so is "essential to preserve higher values and is narrowly tailored to serve that interest." *Lugosch*, 435 F.3d at 120 (quoting *In re N.Y. Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987)).

The Exhibits that Defendants request to file under seal concern non-public, proprietary and commercially sensitive information contained in Virtu's internal policies and training manuals. This Circuit has long recognized that a party's interest in protecting confidential business information outweighs the presumption of access. *See Standard Inv. Chartered, Inc. v. Fin. Indus. Reg. Auth., Ind.*, 347 Fed. App'x 615, 617 (2d Cir. 2009) (protecting confidential business information). Publicly filing the materials at issue would place Virtu at a competitive disadvantage by disclosing its training materials, which Virtu has spent significant time and effort to develop. It also would reveal confidential and proprietary information about Virtu's business operations. Courts in this Circuit routinely find that the risk of revealing confidential business information that will place a party at a competitive disadvantage is a sufficient basis to overcome the presumption of access. *See, e.g., JMG Improvements, Inc v. Arch Specialty Ins. Co.*, 2021 WL 3173022, at *3 (S.D.N.Y. July 26, 2021) (insurance company's interest in "protecting itself from a competitor's obtaining unfettered access to its processes regarding claim handling" outweighed presumption of access); *Skyline Steel, LLC v. PilePro, LLC*, 101 F. Supp. 3d 394, 412–13 (S.D.N.Y. 2015) (granting request to seal documents that would reveal confidential sales and pricing information, and details of the plaintiff's negotiations with clients); *Hesse v. SunGard Systems Int'l*, 2013 WL 174403, at *2–3 (S.D.N.Y. Jan. 14, 2013) (granting request to seal produced emails reflecting "sensitive client information and proprietary business information, including *inter alia*, the company's billing rates and project pricing, as well as details of specific projects completed for several clients").

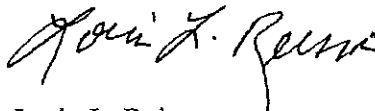
Additionally, the Exhibits contain extensive information concerning Virtu's information security practices, another category of confidential business information warranting protection. *See CBF Industria de Gusa S/A v. AMCI Holdings, Inc.*, 2021 WL 4135007, at *4 (S.D.N.Y. Sept. 10, 2021) ("protecting a company's IT information fits

comfortably within other ‘higher values’ consistently recognized by courts in this Circuit” that can prevail over the presumption of public access); *see also Ramirez v. Temin & Co., Inc.*, 2020 WL 6781222, at *6–7 (S.D.N.Y. Nov. 18, 2020) (identifying “IT information” within the category of “business information” warranting protection).

Finally, Defendants’ request is narrowly tailored and will not impede the public’s access to information relevant to this litigation. The Amended Complaint references and quotes from narrow portions of the policies and training manuals included in the Exhibits. Defendants’ Motion to Dismiss the Amended Complaint similarly references and quotes from these same portions—and closely related portions—of these documents. Defendants are not seeking to redact any of these references and quotations in the briefing. And the vast majority of the information contained in the Exhibits has no bearing on Plaintiff’s claims or Defendants’ motion. Because there is little to no public interest in disclosure of information not at issue in the case, *see Alto v. Sun Pharm. Indus., Inc.*, 2021 WL 4480952, at *1 (S.D.N.Y. Sept. 30, 2021) (granting sealing motion where public interest in pages of lab notebooks that described “experiments and data on projects other than the products at issue in this case” was “low”), Defendants’ narrowly tailored motion should be granted.

For the foregoing reasons, Defendants respectfully request that the Court again grant Defendants’ unopposed motion and permit Defendants to file under seal the Exhibits to the Declaration of Lorin L. Reisner in Support of Defendants’ Motion to Dismiss the Amended Complaint. We appreciate the Court’s consideration and are available to address this request further if necessary at the Court’s convenience.

Respectfully yours,



Lorin L. Reisner

cc: All counsel (via ECF)